

AN ANALYTICAL APPROACH TO DETERMINE OWNERSHIP OF ABANDONED RAILROAD RIGHT OF WAY

JULY 1988

An Analytical Approach to
Determine Ownership of
Abandoned Railroad Right of Way

Administrative policy provides that it is the responsibility of Right of Way Design to determine who owns land needed for right of way purposes for highway and other transportation public works projects. This determination is necessary so that the property can be appraised and purchased or acquired by condemnation. The acquisition of right of way often requires the purchase of land which was formerly used for railroad right of way purposes.

It is necessary that Right of Way Design establish what interests exist and why certain individuals own abandoned railroad right of way while others do not. The problem of determining who owns what is complicated by the manner in which the original right of way was acquired by the railroad, whether by fee or fee with possibility of reverter, or by easement. Determination of ownership of abandoned railroad right of way is further complicated by the numerous changes to statutory provisions that relate to the disposition of or title to abandoned right of way.

This analysis is intended, 1) to provide a systematic approach to determine the nature of the railroad interest, 2) to provide a means of determining which persons other than the railroad own the abandoned railroad right of way, 3) to establish a common method to determine what these ownership interests are and from whom they may be acquired, and 4) to provide some procedural assistance to Right of Way personnel for clarifying and recording title as authorized by law.

Although this analysis makes references to legal authorities to clarify positions taken and conclusions reached, it is not intended to be an authoritative brief. We recognize that it may be necessary in some instances to obtain specific opinions of title from the Attorney General to support or concur in title determinations made through the application of this analysis. We also recognize that in some instances we may not be certain about title judgments which are made until final disposition by the courts. It is our intent to use this analysis to facilitate communication with the Attorney General's Office and with legal counsel for property owners. This analysis will serve its purpose if it helps us to identify title issues and to avoid or reduce title disputes arising out of railroad abandonments.

The Attorney General's Office has reviewed this analysis and concurs in the use of it for the purposes for which it is intended.

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- I. Railroad has Deed with Reversionary Provision, i.e. fee simple determinable (see Example 1):¹
 - A. Deed to Railroad filed of record prior to July 4, 1945, and Abandonment² occurs prior to July 1, 1980:
 1. Reversion holder³ has fee subject to rights of third parties in possession, only if:
 - a. Reversioner shows continuous chain of title to underlying fee of Railroad right of way (see Example 5); and
 - b. Reversioner filed claim to extend his interest under Section 614.24 on or before July 4, 1966, preserving such interest; and
 - c. Reversioner filed like extensions every 21 years thereafter.
 2. Railroad has fee, subject to rights of third parties in possession, if (1) above not complied with.
 - B. Deed to the Railroad filed of record after July 4, 1945, and prior to July 1, 1959, and Abandonment² occurs prior to July 1, 1980:
 1. Reversion holder³ has fee, subject to rights of third parties in possession, only if:
 - a. Reversioner shows continuous chain of title to underlying fee of Railroad right of way (see Example 5); and
 - b. Reversioner filed claim to extend his interest under Section 614.24 on or before expiration of 21 years following date of recording of deed preserving such interest; and
 - c. Reversioner filed like extensions every 21 years thereafter.
 2. Railroad has fee, subject to rights of third parties in possession, if (1) above not complied with.
 - C. Deed to the Railroad filed of record after July 1, 1959, and Abandonment² occurs prior to July 1, 1980:
 1. Reversion holder³ has fee, subject to rights of third parties in possession, only if:
 - a. Reversioner shows continuous chain of title to underlying fee of Railroad right of way (see Example 5); and

- b. Reversioner files facts of record confirming fee, i.e. affidavit of possession, and/or quiet title action (see last sentence, Sec. 614.24).
- 2. Railroad has no fee because the original 21 year period requiring the filing of a claim has not passed prior to the time of the abandonment and the reversion remains enforceable.
- D. Deed to the Railroad filed of record prior to July 1, 1959, and Abandonment² occurs after July 1, 1980:
 - 1. Reversioner has no fee unless he complied with subparagraph A(1), B(1) or C(1) above. Railroad obtained vested rights or ownership prior to July 1, 1980. Section 614.24 will be construed to apply prospectively only, to avoid causing an unconstitutional taking of Railroad property.
 - 2. Reversioner has what appears to be a claim of right to assert his reversioner's interest by language of Section 614.24 as amended in 1980.
 - 3. Because of probability of litigation over application of Section 614.24 as amended in 1980, title from Railroad is not merchantable. Party desiring title to right of way must deal with both the Railroad and the Reversioner.

Caveat: In most cases reversioner rights were not preserved under Sec. 614.24, and the Railroad has fee.

II. Railroad has Easement⁴:

A. Easement created by condemnation:

- 1. Abandonment² occurs prior to July 1, 1980:⁵
 - a. Reversion takes effect 8 years after abandonment or nonuse by railroad.
 - (i) During 8 year period, railroad can grant right of possession to anyone.
 - (ii) At end of 8 year period, neither the railroad, nor the grantee of railroad who had not operated a railroad on the right of way, has any further rights to the land.
 - (iii) If grantee of railroad is operating a railroad, reversion does not occur. (See Byker, supra.⁵)
 - b. At end of 8 year period, reversion is automatic, and right of way reverts to the person who, at the end of the 8 year period, owns the land from which the right of way was taken.
 - c. If there are different land owners on each side of the right of way, each owner would take to the center.

2. Abandonment² occurs after July 1, 1980, and prior to July 1, 1983:
 - a. Reversion takes effect at time of abandonment or nonuse by railroad.
 - b. Right of way reverts to owners of adjacent properties at time of abandonment.
 - c. If there are different land owners on each side of the right of way, each owner would take title to the center.
 - (i) Proof of abandonment may be made by filing Affidavit under Sec. 327G.77(2) as amended in 1983 (see Form).

3. Abandonment² occurs after July 1, 1983:
 - a. Reversion takes effect at time of abandonment, subject to railroad's right to remove track materials on the right of way, which right terminates one year after abandonment.
 - b. Right of way reverts to owners of adjacent property at time of abandonment.
 - c. If there are different owners on each side, each owner takes title to the center.
 - d. Title to adjoining property owner may be perfected by filing an affidavit of ownership with County Recorder under Sec. 327G.77(2) (see Form).

- B. Easement created by document (see Examples 2 & 3) (Reversion right is not extinguished by failure to comply with Sec. 614.36. See Sec. 614.36.):⁶

1. Abandonment² occurs prior to July 1, 1980:
 - a. Reversion takes effect:
 - (i) Immediately upon occurrence of conditions provided in original document for terminating the easement; or
 - (ii) 8 years after construction or use ceases (see subparagraphs under Sec. II, Paragraph A(1)(a), above).
 - b. Reversion is automatic, and right of way reverts:
 - (i) to persons showing continuous chain of title to the underlying fee (see Examples 6 & 7); ⁷ or
 - (ii) to the persons who, at the time of reversion, are owners of the tract from which such right of way was taken.

- c. If there are different land owners on each side or the right of way, each owner would take the property to the center.
- 2. Abandonment² occurs after July 1, 1980, and prior to July 1, 1983:
 - a. Reversion takes effect:
 - (i) Immediately upon occurrence of conditions provided in original document for terminating the easement; or
 - (ii) On effective date of I.C.C. abandonment order.
 - b. Reversion is automatic, and right of way reverts:
 - (i) to the persons showing continuous chain of title, to the underlying fee (see Examples 6 & 7);⁷ or
 - (ii) to the persons who, at the time of reversion, are owners of the tract from which such right of way was taken.
 - c. If there are different land owners on each side of the right of way, each owner would take the property to the center.
- 3. Abandonment² occurs after July 1, 1983:
 - a. Reversion takes effect:
 - (i) Immediately upon occurrence of conditions provided in original document for terminating the easement; or
 - (ii) Upon removal of track materials to the right of way, or one year after final authorization for removal of track materials.
 - b. Reversion is automatic, and right of way reverts:
 - (i) to persons showing continuous chain of title to the underlying fee (see Examples 6 & 7);⁷ or
 - (ii) to persons who, at the time of reversion, are owners of the adjacent property.
 - c. If there are different owners on either side, each owner takes to the center of right of way.
 - d. Title may be perfected by filing an affidavit of ownership with County Recorder under Sec. 327G.77(2) (see Form).

See Example 8 for illustrations.

Caveat: In most cases, no person can show continuous chain of title to the abandoned right of way because fact of ownership has become "lost" by passage of time or by belief that ownership had ceased. In fact, the only persons who can make claim of ownership are the adjacent property owners. The disposition of right of way as shown by Illustration III is remote; disposition generally is made as shown by Illustration VI.

C. Easement by Prescription (no instrument of record):

1. With no record of the railroad's interest, we presume that the Railroad held an easement which was acquired by prescription in the manner provided by Chapter 564, Iowa Code, or by common law prior to enactment of Chapter 564.
 - a. See Sec. II, Paragraph A, above for disposition of the right of way.

Caveat: Generally, right of way abandoned prior to July 1, 1987, has reverted to adjacent property owners and possessory rights have terminated. The exception is when grantee of railroad is operating a railroad.

III. Railroad has Deed without reversionary provision, i.e. fee simple title (see Example 4):

- A. Railroad can convey right of way land whenever it desires to do so and to whomever it wishes.

NOTES:

1. Many courts have found that documents labeled as deeds "for the construction of a railroad" with a reversionary clause conveys an easement. When viewing documents to railroads, any reference or restriction as to use or purpose raises the question of whether or not the railroad has acquired any fee or has acquired an easement only. See Martel, Acquiring Abandoned Railroad Right-of-Way in Iowa, 30 Drake L. Rev. 545, 554, fn. 95 (1981). See Hawk v. Rice, 325 N.W.2d 97 (Iowa 1982).
2. Abandonment is by Order of the Interstate Commerce Commission, or the State Transportation Regulation Board, or by relocation of the line.
3. A reversion holder is either an heir at law or beneficiary, or an assignee, of the original grantor to the railroad.
4. Easements may be lost by nonuse or abandonment. The clearest case of this is where a rail line is relocated. This principle became Iowa statutory law in 1873. Sections 327G.76 and 327G.77 preserve this concept by continuing to acknowledge that these property rights (easements) are extinguished by cessation of service by the railroad.
5. See Byker v. Rice, 360 N.W.2d 572 (Iowa App. 1984); Williams, et al, v. Caskey, et al, Iowa Ct. App., Docket No. 4-220/93-1294, filed 9/6/84, citing Brugman v. Bloomer, 234 Iowa 813, 816, 13 N.W.2d 313,314 (1944), Chadek v. Alberhasky, 253 Iowa 32, 34, 111 N.W.2d 297, 298 (1961); and Atkin v. Westfall, 246 Iowa 822, 828, 69 N.W.2d 523, 527 (1955).
6. An easement is not subject to the recording provisions of Iowa Code Section 614.24, Johnson v. Burlington Northern, Inc., 294 N.W. 2d 63, 66 (Iowa Ct. App. 1980).
7. It appears that an affidavit of possession under Section 614.17, Iowa Code, while it may be a cure or a remedy for other imperfections in a chain of title, it will not reestablish old easement interests. If a title document reestablishing an old easement interest refers specifically to the recorded title document that created the original easement, it would appear that perfection of chain of title can be made. See Note 34, Marshall's Title Standards, Standard 11.5.

DEFINITIONS AND EXAMPLES:

1. Deed with Reversion:

Grantor sells and conveys to Railroad 100' wide strip of land in NE 1/4 Sec. 1-10-100.

In the event Railroad fails to construct a railway or ceases to operate a railway, said land shall revert to Grantor.

2. Deed of Easement without Reversion:

Grantor sells and conveys "for railroad purposes" to Railroad "the right of way" over and through 100' wide strip of land in NE 1/4 Sec. 1-10-100, for uses connected with construction and occupation of Railroad."

3. Deed of Easement with Reversion:

Grantor sells and conveys "for railroad purposes" to Railroad "the right of way" over and through 100' wide strip of land in NE 1/4 Sec. 1-10-100, for uses connected with construction and occupation of Railroad, but if Railroad shall not construct or ceases permanently to use as a railway, then in that event said land shall revert to Grantor.

4. Deed without reversion or easement:

Grantor sells and conveys to Railroad all right, title and interest in 100' wide strip of land in NE 1/4 Sec. 1-10-100.

5. Continuous chain of title to deed reversion right:

The possibility of reverter is an interest in real property that remains with the person and, therefore, must be transferred by affirmative act, i.e., by Assignment or by specific bequest. If original grantor, assignee, or beneficiary of specific bequest fails to transfer the possibility of reverter by affirmative act, the possibility of reverter passes to the heirs at law of said grantor, assignee or beneficiary.

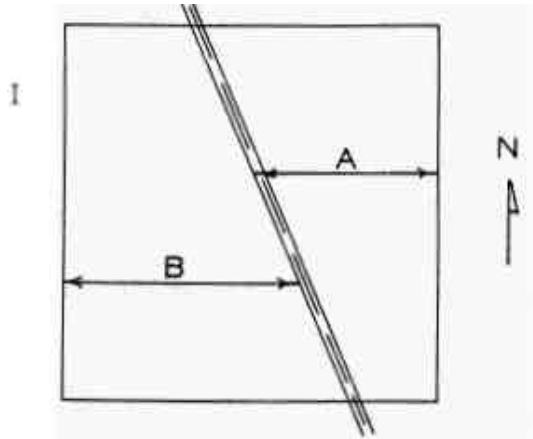
(a) An Assignment or specific bequest should recite:

"I (grantor, assignee or beneficiary) hereby assign (or bequeath) to _____ all my rights to and interest in a possibility of reverter (or in the railroad right of way) by virtue of that certain deed dated _____ and recorded in Book _____, Page _____, Office of _____ County Recorder."

(b) A Deed subsequent to the original deed to the railroad conveying the adjacent real estate would assign or transfer the possibility of reverter, if it recites:

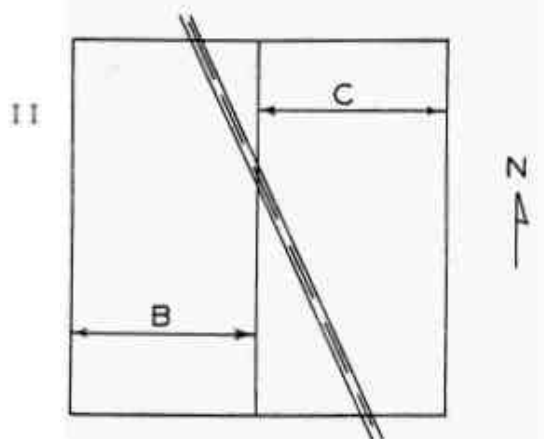
- (i) The NE 1/4, Sec. 1-10-100; or
 - (ii) A metes and bounds description that includes the right of way area; and further contains an assignment similar to that set forth in (a) above.
 - (c) Reversion right is preserved by filing a claim as required by Section 614.24.
6. Continuous chain of title to easement reversion right:
- Easements run with the land. All conveyances subsequent to original easement to the railroad recite:
- (a) The NE 1/4, Sec. 1-10-100, subject to "railroad easement", "railroad right of way", "easements of record", etc.; or
 - (b) A metes and bounds description that includes area of right of way, subject to easement.
7. Broken chain of title to easement reversion right:⁷
- Any conveyance subsequent to the original easement to the railroad that recites:
- (a) The NE 1/4, Sec. 1-10-100, except "railroad easement", etc.; or
 - (b) A metes and bounds description that excludes the right of way area.
8. Easement by document, for the following illustrations:
- if abandonment occurs prior to 7/1/80, reversion effective 8 years after abandonment to owner at time of reversion or no later than July 1, 1988;
- if abandonment occurs between 7/1/80-7/1/83, reversion effective on effective date of abandonment order;
- if abandonment occurs after 7/1/83, reversion effective on removal of track material or 1 year after abandonment order, whichever occurs first

Facts (for illustrations I, II & III): Owner A acquires Section, either subject to Railroad easement or subsequently grants an easement to Railroad prior to any transfers to third parties. (Continuous chain of title to underlying fee of the right of way).



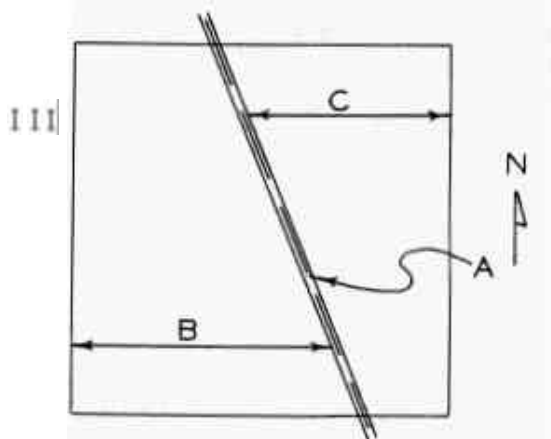
A transfers to B that part of Section lying west of right of way.

On abandonment, A receives east right of way from centerline and B receives west right of way from centerline.



A conveys to B the west half of section and conveys to C the east half of Section.

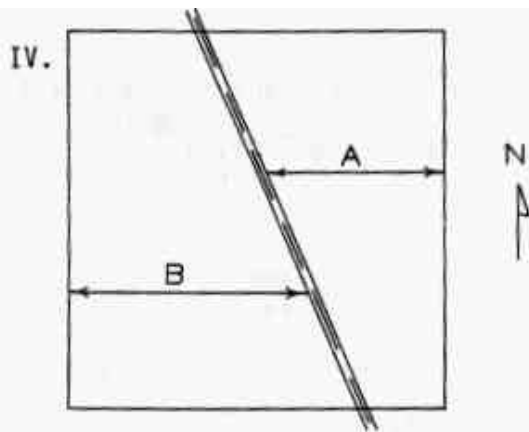
On abandonment, B receives all of right of way lying within west half of Section and C receives all of right of way lying within the east half.



A conveys to B part of Section lying west of right of way and conveys to C part lying east of right of way. A has continuous chain of title to underlying fee of the right of way.

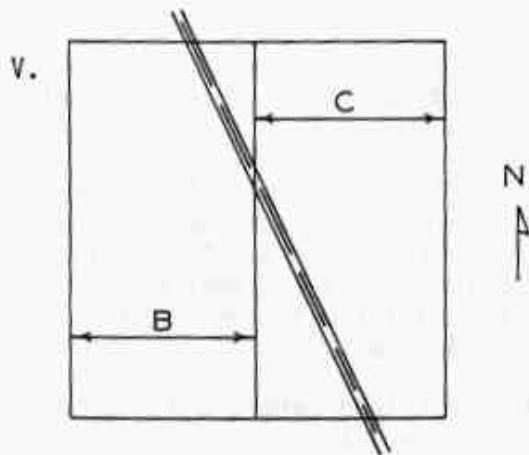
On abandonment A receives all of the right of way.

Facts (for illustrations IV, V & VI): Owner A acquires Section, except railroad easement. (Broken chain of title to underlying fee of the right of way).



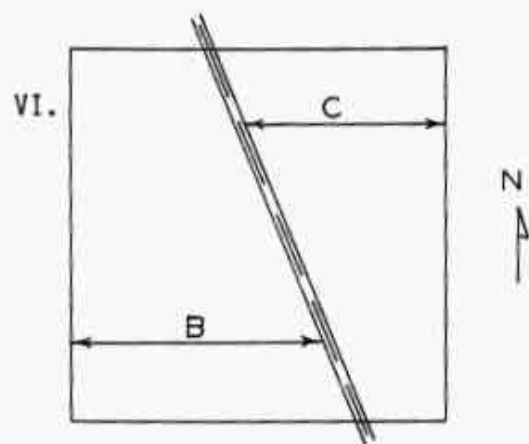
A transfers to B that part of Section lying west of right of way.

On abandonment A receives east right of way from centerline and B receives west right of way from centerline.



A conveys to B the west half of Section and conveys to C the east half of Section.

On abandonment, B receives all of right of way lying within west half of Section and C receives all of right of way lying within east half.



A conveys to B part of Section lying west of right of way and conveys to C part of Section lying east of right of way.

On abandonment B receives west right of way from centerline and C receives east right of way from centerline. A receives nothing - he never acquired underlying fee.

State of Iowa)
) ss.
County of _____)

AFFIDAVIT OF OWNERSHIP
(Filed pursuant to Iowa
Code Section 327G.77)

I, _____, of lawful age, being first duly sworn on oath, depose and state:

That I own fee title to a tract of land in the _____ of Sec. _____, T__N, R__W of the 5th P.M., in _____ County, Iowa, which is adjacent to certain railroad right of way. The _____ acquired an easement to said railroad right of way in a certain document filed in the _____ County Recorder's Office on _____, 18 _____, in Book _____, Page _____.

That the _____ acquired ownership of said easement in _____. On _____, 19 _____, a Certificate and Order was issued by the Interstate Commerce Commission in Docket No. _____ in the matter of the _____ authorizing abandonment of the railroad line between _____ and _____ in _____ County effective _____, 19 _____. This Order permitted the abandonment of that railroad line, a part of which traverses the above described tract. The authority granted in this Certificate and Order was exercised within one year from its effective date.

That the track materials on the right of way easement have been removed and that their removal occurred during 19 _____.

By operation of law, the abandonment of former railroad line and the passage of one year from the date of the ICC Order did thereby release, abandon, and extinguish all the railroad's right, title, and easement interest in and to said former railroad right of way. That reversion of the easement was effective _____, 19 _____, at which time title to the former railroad right of way vested in the adjacent land owners.

By authority of Iowa Code Section 327G.77, adjacent land owners are the fee owners of abandoned railroad easement lands, and are authorized to file an Affidavit affirming such ownership with the county recorder.

Therefore, I affirm and state that I am the owner of the _____ half of the abandoned railroad right of way in the _____ of Sec. _____, T__N, R__W of the 5th P.M., in _____ County, Iowa, adjacent to the above described tract of land owned by me.

Dated this _____ day of _____, 19 _____.

Subscribed and sworn to before me on this _____ day of _____, 19 _____

Notary Public in and for the State of Iowa

STATUTORY ATTACHMENTS:

Chapter 473, Iowa Code, Prior to July 1, 1976
Section 327G.76, Iowa Code, From July 1, 1976 to July 1, 1980
327G.76, Iowa Code, From July 1, 1980 to July 1, 1983
327G.76, Iowa Code, From July 1, 1983 to Date
Section 327G.77, Iowa Code, From July 1, 1976 to July 1, 1980
327G.77, Iowa Code, From July 1, 1980 to July 1, 1983
327G.77, Iowa Code, From July 1, 1983 to Date
Section 614.24, Iowa Code, Prior to July 1, 1980
614.24, Iowa Code, From July 1, 1980 to Date
Section 614.36, Iowa Code, From 1971 to Date

PRIOR TO JULY 1, 1976

CHAPTER 473

REVERSION TO OWNERS UPON ABANDONMENT

473.1 Relocation of railway.

473.2 Failure to operate or construct railway.

473.3 and 473.4 Repealed by 54GA, ch 103, §22.

473.1 Relocation of railway. Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are owners of the tract from which such abandoned right of way was taken. [C24, 27, 31, 35, 39, §7861; C46, 50, 54, 58, 62, 66, 71, 73, §473.1]

473.2 Failure to operate or construct railway. If a railway, or any part thereof, shall not be used or operated for a period of eight years, or if, its construction having been com-

menced, work on the same has ceased and has not been in good faith resumed for eight years, the right of way, including the roadbed, shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right of way was taken. [C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §7862; C46, 50, 54, 58, 62, 66, 71, 73, §473.2]

473.3 and 473.4 Repealed by 54GA, ch 103, §22. See ch 306 for disposal of abandoned highways.

JULY 1, 1976 - JULY 1, 1980

DIVISION III. REVERSION TO OWNERS UPON ABANDONMENT

Formerly Chapter 473

327G.76 Relocation of railway. Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are owners of the tract from which such abandoned right of way was taken. [C24, 27, 31, 35, 39, §7861; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.1; C77, §327G.76]

327G.77 Failure to operate or construct railway. If a railway, or any part thereof, shall not be used or operated for a period of eight years, or if, its construction having been commenced, work on the same has ceased and has not been in good faith resumed for eight years, the right of way, including the roadbed, shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right of way was taken. [C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §7862; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.2; C77, §327G.77]

JULY 1, 1980 - JULY 1, 1983

DIVISION III. REVERSION TO OWNERS UPON ABANDONMENT

Formerly Chapter 473

327G.76 Relocation of railway. Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are owners of the tract from which such abandoned right of way was taken. [C24, 27, 31, 35, 39, § 7861; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.1; C77, 79, 81, §327G.76]

327G.77 Reversion of railroad right of way.

1. If a railroad right of way acquired by condemnation is abandoned by order of the federal interstate commerce commission or the state transportation regulation authority, that right of way shall revert to owners of the adjacent properties at the time of the abandonment. If there are different owners on each side of the right of way, each owner shall take title to the center of the right of way. The provisions of section 614.24 requiring the filing of a verified claim shall not apply to the reversionary interest granted by this subsection.

2. If the state department of transportation finds that a railroad right of way is suitable for present or future rail use at least fifteen days before the effective date of an order of abandonment and the railroad right of way was acquired by condemnation, deed or conveyance and is subject to a reversionary interest, the reversion which would occur upon the abandonment of the right of way for railway purposes shall not occur until two years after the effective date of the order of abandonment by the federal interstate commerce commission or the state transportation regulation authority. During that two year period another railroad company or the state may succeed to the interest of the abandoning railroad company in the right of way if it is used for railway purposes. A railroad company or the state which succeeds to that interest shall hold that interest as long as it is used for railway purposes subject to the interests as when it was held by the abandoning railroad company. [C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §7862; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.2; C77, 79, 81, §327G.77; 81 Acts, ch 22, §22]

Referred to in §327G.78

DIVISION III

REVERSION TO OWNERS UPON ABANDONMENT

327G.76 Time of reversion.

Railroad property rights which are extinguished upon cessation of service by the railroad divest when the railway finance authority or the railroad, having obtained authority to abandon the rail line, removes the track materials to the right-of-way. If the railway finance authority does not acquire the line and the railway company does not remove the track materials, the property rights which are extinguished upon cessation of service by the railroad divest one year after the railway obtains the final authorization necessary from the proper authority to remove the track materials.

[C24, 27, 31, 35, 39, §7861; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.1; C77, 79, 81, §327G.76]

83 Acts, ch 121, §5

327G.77 Reversion of railroad right-of-way.

1. If a railroad easement is extinguished under section 327G.76, the property shall pass to the owners of the adjacent property at the time of abandonment. If there are different owners on either side, each owner will take to the center of the right-of-way. Section 614.24 which requires the filing of a verified claim does not apply to rights granted under this subsection.

2. An adjoining property owner may perfect title under subsection 1 by filing an affidavit of ownership with the county recorder. The affidavit shall include the name of the adjoining property owner, a description of the property, the present name of the railroad, the jurisdiction, docket number, and date of order authorizing the railroad to terminate service, and the approximate date the track materials on the right-of-way were removed. A copy of the affidavit must be mailed by the landowner by certified mail to the railroad. The landowner shall pay taxes on the right-of-way from the date the affidavit is filed.

3. Utility facilities located on abandoned railroad right-of-way shall remain on the right-of-way subject to payment by the utility of the fair market value of an easement for the facilities. The utility shall, within sixty days from the time the property is transferred from the railroad, extend a written offer to the landowner to purchase the easement at fair market value. The landowner shall accept or reject the utility's offer within sixty days from the time of receipt. If a disagreement arises between the parties concerning the price or other terms of the transaction, either party may make written application to a compensation commission as established pursuant to chapter 472 to resolve the disagreement. This application shall be made within sixty days from the time the landowner's response is served upon the utility. The compensation commission shall hear the controversy and make a final determination of the fair market value of the easement and the other terms of the transaction which were in dispute within ninety days after the application is filed. All correspondence shall be by certified mail.

[C73, §1260; C97, §2015; C24, 27, 31, 35, 39, §7862; C46, 50, 54, 58, 62, 66, 71, 73, 75, §473.2; C77, 79, 81, §327G.77; 81 Acts, ch 22, §22]

83 Acts, ch 121, §6

614.24 Reversion or use restrictions on land—preservation. No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, by himself, or by his attorney or agent, or if he is a minor or under legal disability, by his guardian, trustee, or either parent or next friend, shall file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests. [C66, 71, 73, 75, 77, §614.24]

Referred to in §§229.27, 614.26, 614.27, 614.28

614.24 Reversion or use restrictions on land — preservation.

No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, personally, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent or next friend, shall file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests.

The provisions of this section requiring the filing of a verified claim shall not apply to the reversion of railroad property if the reversion is caused by the property being abandoned for railway purposes and the abandonment occurs after July 1, 1980. The holder of such a reversionary interest may bring an action based upon the interest regardless of whether a verified claim has been filed under this section at any time after July 4, 1965.

[C66, 71, 73, 75, 77, 79, 81, §614.24]

614.36 Lessors, reversioners and easements.

This division shall not be applied to bar any lessor or lessor's successor as a reversioner of the lessor's right to possession on the expiration of any lease; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is apparent from or can be proved by physical evidence of its use; or to bar any right, title or interest of the United States, by reason of failure to file the notice herein required.

[C71, 73, 75, 77, 79, 81, §614.36]